

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)

Implementation of the Local Competition)
Provisions in the Telecommunications)
Act of 1996)

CC Docket No. 96-98
(Phase I)

To: The Commission

COMMENTS OF AD HOC COALITION OF
CORPORATE TELECOMMUNICATIONS MANAGERS

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Ad Hoc Coalition of Corporate
Telecommunications Managers

by

Rodney L. Joyce
Ginsburg, Feldman and Bress
1250 Connecticut Ave., N.W.
Washington, DC 20036
(202) 637-9005

May 16, 1996

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SUMMARY

In these comments, an ad hoc coalition of nine corporate telecommunications managers explains why it believes the FCC should adopt far fewer regulations in implementing Sections 251 and 252 than it proposed in the Notice of Proposed Rulemaking in this proceeding. In addition, while the coalition urges the FCC to quickly reform its interstate access charge pricing rules, it asks that the agency reform those rules in a separate rulemaking rather than in the present proceeding. The result of acting in that fashion would be that a LEC would base the pricing of interconnection and unbundled network elements provided under Section 251 on costs which are allocated for recovery from the intrastate jurisdiction. That price would permit the interconnector to use its interconnection arrangement to provide exchange service. A competitive carrier who wants to use those elements to provide interstate access service would pay an additional charge calculated under the FCC's interstate access charge rules.

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These comments, by an ad hoc coalition of corporate telecommunications managers, are submitted in response to the proposals the Commission makes to implement Sections 251 and 252 of the Communications Act. Among other things, those provisions open the local exchange telephone service market to full competition by requiring that incumbent local exchange companies ("LECs") (1) permit competitors to interconnect with their networks; (2) sell network elements on an unbundled basis to exchange service competitors; and (3) permit competitors to locate equipment they use to provide exchange service inside the incumbent LEC's central offices. As major customers of both local and toll telephone services, we have a significant interest in the rapid development of competition in both the local exchange and toll markets. Attached to these comments is a list of the corporate telecommunications managers on whose behalf these comments are filed.

While we share the Commission's desire for the rapid development of competition in all telecommunications markets -- both local

exchange and toll -- we file these comments in order to make two points. Each is discussed below.

I. The Commission Should Implement Sections 251 and 252 by Adopting Far Fewer New Regulations than It Proposes

For three reasons, we urge the FCC to adopt far fewer regulations in implementing Sections 251 and 252 than it has proposed. In its Notice, the Commission has proposed more than 100 new Federal regulations.

First, the FCC proposes to adopt many new regulations that are unnecessary on their face. As one example, the agency proposes to adopt new regulations which define technical interface specifications for the wide variety of equipment that competitors and LECs will use to interconnect their respective networks.^{1/} But it offers no hint about what technical specifications it will adopt, and it does not explain why it thinks the Federal government can adopt technical specifications better than the private technical standards-setting organizations that already exist in the telecommunications industry. Nor does the agency explain how it could possibly keep FCC-imposed technical interface specifications current given rapid changes in technology and the cumbersome rulemaking procedures the FCC would have to follow in order to amend its technical specification rules.

Second, while the FCC speculates that adoption of scores of new Federal regulations may speed the development of local exchange service competition, the opposite is more likely because each new

^{1/} Notice at ¶79.

Federal regulation almost certainly will create numerous new litigation opportunities. An illustration may be useful. Section 251(c)(3) requires that incumbent LECs provide unbundled network components to competitors on a "nondiscriminatory" basis. Rather than allowing a LEC's compliance with its duty of non-discrimination to be negotiated (and if necessary adjudicated) on a case-by-case basis, the FCC proposes to adopt several new rules that would attempt to define what the obligation to provide unbundled elements on a "nondiscriminatory" basis means. One of those rules would state that an incumbent LEC would be deemed to violate its obligation of non-discrimination if a customer of a competing exchange carrier which had obtained an unbundled element from the incumbent LEC "could perceive any differences in the quality of service provided by . . . [its local exchange service provider] as compared with" service provided by the incumbent LEC.^{2/} That rule alone would produce endless opportunities for litigation. For example, litigation almost certainly would arise over the question of how many end users must perceive a quality difference before the new rule would be deemed violated. Litigation also would arise over the question of whether the customer's "perception" of inferior service must be substantiated by some objective measure of inferior quality. And there certainly would be litigation about whether the inferior service offered was caused by the unbundled network element provided by the incumbent LEC or by some other reason. Litigation will slow -- not speed -- the

^{2/} Notice at ¶91.

development of competition. Some of it can be avoided if the Commission adopts fewer new regulations.

Third, we ask the FCC to implement Sections 251 and 252 of the Act in a less regulatory way than it has proposed because we believe state communications regulatory agencies are in a better position than the Federal government to ensure that the incumbent LECs operating within their states comply with the requirements that these provisions of the Act impose on incumbent LECs.

II. While the FCC Should Quickly Reform Its Rules Governing Interstate Access Charges and Universal Service, It Should Not Require Incumbent LECs to Lower Interstate Access Charges Until Those Reforms Are In Place

Not only do we urge the FCC to adopt far fewer regulations than it has proposed, we also ask the agency to reconsider one specific conclusion it has tentatively reached. Although Section 251(c)(3) of the Act plainly requires that incumbent LECs permit interconnection for the provision of local exchange service and Section 251(d) requires that the interconnection be provided at cost plus a reasonable profit, the FCC tentatively concludes in its Notice that these provisions also require that incumbent LECs immediately lower their access charges for the provision of toll service to a level based on cost plus reasonable profit.^{3/} The FCC acknowledges that LECs charge more than cost for toll access service today because the FCC's so-called "universal service" policies require that they do so in order to subsidize local telephone rates. But the Commission proposes that incumbent LECs continue to

^{3/} Notice at ¶¶80, 120, 159-165.

provide these subsidies while simultaneously lowering their toll access charges. Unfortunately, however, the agency does not explain where the LECs would get the money to do so.^{4/}

For both policy and legal reasons, we ask the Commission to reconsider its tentative conclusion to require that incumbent LECs lower their access charges for the provision of toll service while continuing to provide universal service subsidies. We think the Commission's proposal is bad policy because forcing LECs into this price/cost squeeze could hurt telecommunications service customers. As major users of toll service, we recognize that we would benefit in the short term if incumbent LECs lowered their toll access charges through lower toll charges. But we believe any benefit would be outweighed by the harm to telecommunications competition which this action would create. Forcing incumbent LECs into a short term cost/price squeeze almost certainly would harm telecommunications competition by complicating their ability to enter the toll market as aggressive competitors. It also inevitably would harm exchange service competition by complicating the ability of incumbent LECs to continue providing high quality exchange service.

In addition, Section 251(g) of the Act makes plain that the FCC's tentative conclusion that Section 251(c)(3) requires incum-

^{4/} Section 254 of the Act requires that the FCC issue an order by May 8 of next year reconsidering the need to continue existing subsidies, but the Act does not require that these subsidies be reduced or eliminated at any specific time in the future. In the Notice, the Commission states only that it recognizes that its access charge rules need to be reformed and it promises to begin an investigation of various reforms "in the very near future." Notice at ¶165.

bent LECs to lower toll access charges while maintaining their existing universal service subsidy payments is wrong as a matter of law. By its terms, Section 251(g) prohibits the FCC from interpreting Section 251(c)(3) as requiring lower toll access charges:

[E]ach local exchange carrier . . . shall provide exchange access [service] . . . in accordance with the same equal access . . . obligations (including receipt of compensation) that apply . . . on [February 7, 1996] . . . until such . . . obligations are explicitly superseded by regulations prescribed by the Commission after such date of enactment." (emphasis added).

The legislative history confirms that Section 251(c)(3) does not require incumbent LECs to lower access charges. Thus, in describing Section 251 of S.652 -- the provision on which Section 251 of the Act is based -- the Conference Committee Report states that "nothing in this section is intended to affect the Commission's access charge rules."^{5/} Similarly, the Senate Commerce Committee Report on S.652 states that "nothing in Section 251 is intended to change or modify the FCC's rules . . . regarding the charges that an interexchange carrier pays to local exchange carriers for access to the local exchange carrier's network."^{6/}

We support toll access charge reform, and we hope the FCC will make this reform quickly. But we also hope the agency does not require that LECs lower their toll access charges without simultaneously reducing the LECs' obligation to finance the FCC's universal service subsidy programs by a corresponding amount.

^{5/} Joint Explanatory Statement of the Committee of Conference at 117.

^{6/} S. Rep. No. 23, 104th Cong., 1st Sess. at 22 (1995).

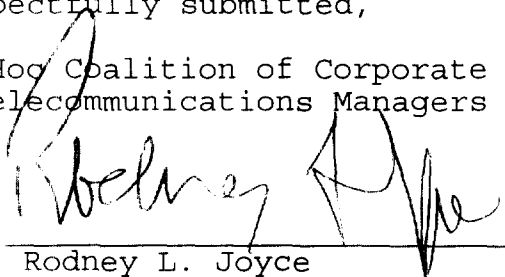
CONCLUSION

For reasons described above, we urge the FCC to (1) implement Sections 251 and 252 of the Communications Act by adopting far fewer regulations than it has proposed, and (2) require incumbent LECs to lower interstate access charges for toll service expeditiously, but only to the extent the LECs are relieved from existing FCC obligations to support the agency's universal service programs.

Respectfully submitted,

Ad Hoc Coalition of Corporate
Telecommunications Managers

by:



Rodney L. Joyce
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

May 16, 1996

Attachment

<u>Name</u>	<u>Title</u>	<u>Corporation</u>
Virgil W. Palmer	Manager, Computing & Telecommunications	Air Products and Chemicals, Inc.
Donald T. Wiczek	Office Manager	The Copps Corp.
James R. Ivan	Manager, Corporate Telecommunications	GenCorp
Thomas M. Coburn	Telecommunications Manager	The Gleason Works
Bob Lane	Assistant Vice President	National City Bank, Indiana
W. Joseph Rutter	Vice President, Telecommunications	PNC Bank
G.W. Ted Caron	Director, Corporate Telecommun.	US Freightways Corp.
Jeff Schaal	Data Communications Manager	Willamette Industries, Inc.
Keith A. Farnham	Telecommunications Manager	Zurn Industries, Inc.